



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : BIR/OOFY/LIS/2016/0017

Property : FLAT 24, The Wedge, Vernon Road
NOTTINGHAM NG6 0AU

Applicant : Nottingham Wedge Property Management Co Ltd

Representative : MPM Ltd

First Respondent : Mr Michael Anthony Owens (not represented)

Second Respondent : Commercial First Business Ltd (not represented in submissions)

Type of Application : Application for the determination of liability to pay and Reasonableness of Service Charges under Section 27A Landlord & Tenant Act 1985

Tribunal Members : Mr Ivan P. Taylor BSc FRICS (Valuer Chair)

Date and venue of Hearing : 6th September 2016 – Paper determination

Date of Decision : 4 October 2016

DECISION

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APPLICATION

1. On 12th April 2016 the Applicant, Nottingham Wedge Property Management Company Ltd, applied to the First Tier Tribunal (“the Tribunal”) for a determination under Sections 27A of the Landlord and Tenant Act 1985 (“the Act”) of liability to pay, and reasonableness of, service charges levied in the years 2014, 2015 and on account payments for 2016 in respect of Flat 24, The Wedge , Vernon Road, Nottingham, NG6 0AU (“the Property”).
2. By directions, issued by the Regional Judge, dated 18th April 2016 , the Tribunal directed that the Second Respondent confirm that it is the mortgagee in possession of both flats and indicate whether it intends to oppose the application. The Tribunal also requested that by 10th May 2016 the Applicant must provide the usual or last known address of the First Respondent for the purposes of Rule 16 (5) (c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to enable notice of the application to be given under Rule 29.
3. On the 5th May 2016 a further Direction was sent to the parties (Directions Order 2) directing that an appropriate correspondence address is supplied for the First Respondent by 5pm on 20th May 2016.
4. On the 7th June 2016 the Solicitors acting for the Second Defendant, Moore Blatch, wrote to the Tribunal to confirm that they act for Mortgagees in possession of the Freehold (not the flat) in place of Bel-Air Homes Ltd and their Clients do not wish to be a party to the action, merely a “remotely interested party” and thus be removed as a Respondent.
5. By further Directions (Direction Order 3) dated 23rd June 2016 a Deputy Regional Judge directed that the Application be dealt with on the basis of

written representations unless a hearing was requested by any of the parties. A timetable was set for submissions and no request was made for an oral hearing.

6. On the 19th July 2016 Directions (Direction Order 4) were issued by the Regional Judge that unless the First Respondent complies with para 5. of the Directions issued on the 23rd June 2016 he shall be barred from taking part in proceedings, the Tribunal need not consider any response or other submissions made by that Respondent and the Tribunal may summarily determine any or all issues against that Respondent under Rule 9(8).
7. On the 4th August 2016 the Regional Judge Directed (Directions Order 5) that the First Respondent has failed to comply with Directions dated 23rd June 2016 & 19th July 2016 and thus the Tribunal will summarily determine all issues against the First Respondent under Rule 9(8) by written representation only.
8. Written representations were received from the Applicant which appear to have been copied to the First & Second Respondent.
9. The service charge for the periods in question relate to;

1st January 2014 – 31st December 2014 (excess service charge)
1st January 2015 – 31st December 2015 (full year)
1st January 2016 – 31st December 2016 (on account request)

BACKGROUND

10. The First Respondent, Michael Anthony Owens is the Lessee of the property and holds the residue of 999 year term from 1st October 2006 made between (1) Bel-Air Homes Ltd, (2) Michael Anthony Owen (3) Nottingham Wedge Management Company Ltd. Service Charge percentages are shown as 1/22nd of the service costs.
11. The Tribunal noted that page 4 of the Lease was missing and the parties were informed but it appears neither they, nor Land Registry, has a copy of the missing page. The Applicants were able to supply a page 4 from an identical Lease within the building and Tribunal had no alternative but to accept the position based upon the information provided.
12. The Applicant is Nottingham Wedge Property Management Company Ltd which appears to be a Management Company acting on behalf of the Lessees.
13. The Service Charge year appears to run from 1st January to 31st December in each year as per Schedule 5 of the Lease.

THE LAW

Section 19 Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and*
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

- (c) the person by whom it is payable,*
- (d) the person to whom it is payable,*
- (e) the amount which is payable,*
- (f) the date at or by which it is payable, and*
- (g) the manner in which it is payable.*

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,*
- (b) the person to whom it would be payable,*
- (c) the amount which would be payable,*
- (d) the date at or by which it would be payable, and*
- (e) the manner in which it would be payable.*

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

APPLICANT'S SUBMISSION

14. The Tribunal received a comprehensive set of papers from the Applicant, in compliance with the Tribunal's Directions, which included accounts (not dated) and copy invoices. There were however no specific reasons given in respect of the Applicant's contentions other than the invoices supplied.
15. No explanations relating to the invoices were given but a brief statement of case was submitted dated 6th August 2016.
16. The Tribunal found the submission relating to the statement of anticipated expenditure (2016) unhelpful as there was no context nor detail.

DETERMINATION

17. The Tribunal considered the provisions in the Lease and noted the obligations for the Tenant to pay service charges as set out in Schedule 1, Schedule 5 & Schedule 6 (parts 1 & 2)
18. The Tribunal considered the accounts, budget presented and corresponding invoices relating to the service charge periods in question and in its capacity as an expert Tribunal makes the following adjustments (explanatory schedules have been provided for detail);

1st January 2014 – 31st December 2014

- (a) The amount in the sum of £445 being the fees charged by Blue Accounting Ltd (account 625) "*for construction of income and expenditure and balance sheet*". There is no explanation for this

sum and in any event should clearly be a function of the managing agents (RICS Service Charge Residential Management Code) and is thus disallowed

- (b) The amount in the sum of £6,600 being the total fees for Blue Property Management appears, without any explanation, an inflated sum in this type project with the number of units involved. The Tribunal also believes, from the information provided that the managing agents have either not read or ignored the lease provided (relating to window cleaning and Insurance). The Tribunal has considered this and believes that a maximum figure, including VAT, would be £4,800,000 per annum thus the difference between the annual charge of £6,600 and £4,800 is disallowed.
- (c) The amount in the sum of £1,296 being the total charged by Blue Property Maintenance Ltd relating to window cleaning per flat/apartment is to be disallowed. The Tribunal found that the lease specifically excludes this within Schedule 1 clause 2.1.
- (d) The amounts shown in the accounts relating to Directors and Officers Liability for the year ending 31st January 2014 and 31st January 2015 shown in these accounts total £426.39 are to be disallowed. There is no provision within the lease for this payment.

1ST January 2015 – 31ST December 2015

- (e) The amount in the sum of £445 being the fees charged by Blue Accounting Ltd (account 652) "*for construction of income and expenditure and balance sheet*". There is no explanation for this sum and should clearly be a function of the managing agents

(RICS Service Charge Residential Management Code) and is thus disallowed

- (f) The amount in the sum of £6,600 being the total fees for Blue Property Management appears, without any explanation an inflated sum in this type project with the number of units involved. The Tribunal also believes, from the information provided that the managing agents have either not read or ignored the lease provided (relating to window cleaning and Insurance). The Tribunal has considered this and believes that a maximum figure, including VAT, would be £4,800,000 per annum thus the difference between the annual charge of £6,600 and £4,800 is disallowed.
- (g) The amount in the sum of £1,296 being the total charged by Blue Property Maintenance Ltd relating to window cleaning per flat/apartment is to be disallowed. The Tribunal found that the lease specifically excludes this within Schedule 1 clause 2.1.
- (h) The amounts shown in the accounts relating to Directors and Officers Liability for the year ending 31st January 2016 shown in these accounts totalling £199.84 is to be disallowed. There is no provision within the lease for this payment.

1st January 2016 – 31st December 2016

(statement of anticipated service charge expenditure)

- (i) The amounts shown in the accounts relating to Directors and Officers Liability for both the years ending 31st January 2016 shown in these accounts totalling £112.32 is to be disallowed. There is no provision within the lease for this payment.

19. Therefore, The Tribunal has concluded that the following amounts disallowed should be applied to the annual accounts and thereafter are determined to be reasonable and payable;

- (a) 1st January 2014 – 31st December 2014 = £3,967.39 (disallowed)
- (b) 1st January 2015 – 31st December 2015 = £3,740.84 (disallowed)
- (c) 1st January 2016 – 31st December 2016 = £112.32 (disallowed)
- (d) Once the proportionate amount which has been disallowed has been applied to the accounts the appropriate proportion payable by Mr Michael Anthony Owens should be re-calculated accordingly.

20.No Application was made by either party in respect of Section 20C costs and therefore no determination is made in that regard.

21. In reaching its determination the Tribunal has had regard to the submissions of the parties, the relevant Law and its own general knowledge and experience but not any special or secret knowledge.

Appeal

22.A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169)

Mr Ivan P.Taylor BSc FRICS
Valuer Chair

period 1st January 2014 - 31st December 2014
credits determined

date	Vendor	No	tendered	determined	differential
31.12.2014	Blue Accounting	625	£445.00	£0.00	-£445.00
01.01.2014	Blue Prop Man	883	£550.00	£400.00	-£150.00
01.02.2014	Blue Prop Man	884	£550.00	£400.00	-£150.00
01.03.2014	Blue Prop Man	885	£550.00	£400.00	-£150.00
01.04.2014	Blue Prop Man	1155	£550.00	£400.00	-£150.00
01.05.2014	Blue Prop Man	1255	£550.00	£400.00	-£150.00
01.06.2014	Blue Prop Man	1356	£550.00	£400.00	-£150.00
01.07.2014	Blue Prop Man	1469	£550.00	£400.00	-£150.00
01.08.2014	Blue Prop Man	1572	£550.00	£400.00	-£150.00
01.09.2014	Blue Prop Man	1672	£550.00	£400.00	-£150.00
01.10.2014	Blue Prop Man	1795	£550.00	£400.00	-£150.00
01.11.2014	Blue Prop Man	1897	£550.00	£400.00	-£150.00
01.12.2014	Blue Prop Man	2008	£550.00	£400.00	-£150.00
01.05.2014	Blue Prop maint	26514	£432.00	£0.00	-£432.00
28.06.2014	Blue Prop Maint	20680	£216.00	£0.00	-£216.00
28.8.2014	Blue Prop Maint	21437	£216.00	£0.00	-£216.00
28.8.2014	Blue Prop Maint	22733	£216.00	£0.00	-£216.00
28.12.2014	Blue Prop Maint	23594	£216.00	£0.00	-£216.00
04.04.2013	Reich Insurance	2013	£208.00	£0.00	-£208.00
04.04.2014	Reich Insurance	2014	£218.39	£0.00	-£218.39

Amounts disallowed -£3,967.39

period 1st January 2015 - 31st December 2015
credits determined

date	Vendor	a/c No	tendered £	determined £	differential £
29.01.2016	Blue Accounting	652	£445.00	£0.00	-£445.00
04.02.2015	Reich Insurance	2015	£199.84	£0.00	-£199.84
01.01.2015	Blue Prop Man	2133	£550.00	£400.00	-£150.00
01.02.2015	Blue Prop Man	2263	£550.00	£400.00	-£150.00
01.03.2015	Blue Prop Man	2379	£550.00	£400.00	-£150.00
01.04.2015	Blue Prop Man	2488	£550.00	£400.00	-£150.00
01.05.2015	Blue Prop Man	2612	£550.00	£400.00	-£150.00
01.06.2015	Blue Prop Man	2752	£550.00	£400.00	-£150.00
01.07.2015	Blue Prop Man	2883	£550.00	£400.00	-£150.00
01.08.2015	Blue Prop Man	3014	£550.00	£400.00	-£150.00
01.09.2015	Blue Prop Man	3186	£550.00	£400.00	-£150.00
01.10.2015	Blue Prop Man	3307	£550.00	£400.00	-£150.00
01.11.2015	Blue Prop Man	3427	£550.00	£400.00	-£150.00
01.12.2015	Blue Prop Man	3604	£550.00	£400.00	-£150.00
28.02.2015	Blue Prop Maint	24499	£216.00	£0.00	-£216.00
28.04.2015	Blue Prop Maint	25507	£216.00	£0.00	-£216.00
28.06.2015	Blue Prop Maint	26370	£216.00	£0.00	-£216.00
28.08.2015	Blue Prop Maint	28514	£216.00	£0.00	-£216.00
28.10.2015	Blue Prop Maint	29675	£216.00	£0.00	-£216.00
28.12.2015	Blue Prop Maint	30717	£216.00	£0.00	-£216.00

Amounts disallowed -£3,740.84

Period 1st January 2016 - 31st December 2016
credits determined for on account payment in advance

d	Vendor		determined differential
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Reich	£112.32	£0.00	-£112.32
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<u>Amounts disallowed</u>	<u>-£112.32</u>
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